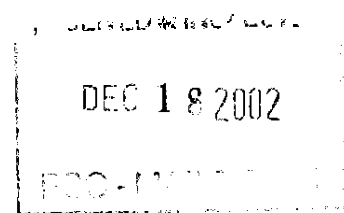


Before the
Federal Communications Commission
Washington, DC 20554



In the Matter of)
)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Horizon Science Academy)
Cleveland, Ohio)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-266453

CC Docket No. 96-45

CC Docket No. 97-21✓

ORDER

Adopted: December 16, 2002

Released: December 17, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Horizon Science Academy (Horizon), Cleveland, Ohio: seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Horizon seeks review of SLD's refusal to consider Horizon's appeal to SLD on the grounds that it was untimely filed. For the reasons set forth below, we deny Horizon's Request for Review.

2. SLD issued a Funding Commitment Decision Letter on January 11, 2002, denying Horizon's request for discounted services under the schools and libraries universal service support mechanism.² Specifically, SLD denied Horizon's request for discounts for telecommunications service, Funding Request Numbers (FRNs) 514089, 514261, 514275, 514781, and 529136. At Horizon's request, SLD provided another copy of the Funding Commitment Decision Letter on August 13, 2002.³ On August 21, 2002, Horizon filed an appeal

¹ Letter from Sedat Duman, Horizon Science Academy, to Federal Communications Commission, filed October 25, 2002.

² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Taner Ertekin, Horizon Science Academy, dated January 11, 2002 (Funding Commitment Decision Letter).

³ Letter Re-Order Advisory Cover Sheet from Schools and Libraries Division, Universal Service Administrative Company, to Sedat Duman, Horizon Science Academy, dated August 13, 2002 (Re-Order Advisory Sheet). The Re-Order Advisory Sheet is usually sent when an applicant requests a copy of the Funding Commitment Decision Letter from SLD. The Re-Order Advisory Sheet advises the applicant that all terms, conditions, dates and/or notions

of SLD's January 11, 2002 decision to deny FRNs 514089, 514261, 514275, 514281, and 529136.⁴ On August 26, 2002, SLD issued an Administrator's Decision on Appeal, indicating that it would not consider Horizon's appeal because it was received more than 60 days after the Funding Commitment Decision Letter was issued.⁵ Horizon subsequently filed the instant Request for Review with the Commission.

3. For requests seeking review of decisions issued on or after August 13, 2001 under section 54.720(b) of the Commission's rules, any such appeal must be filed with the Commission or SLD within 60 days of the issuance of the decision that the party seeks to have reviewed.⁶ Documents are considered to be filed with the Commission or SLD only upon receipt.⁷ Because the St. Lucy School's Request for Administrator Review was not filed within the requisite 60-day period, we affirm the Administrator's Decision on Appeal and deny the instant Request for Review.

4. To the extent that Horizon is requesting that we waive the 60-day deadline established in section 54.720(b) of the Commission's rules, we deny that request as well.⁸ The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.⁹ Horizon has not shown good cause for the untimely filing of its initial appeals. Horizon explains that it never received the Funding Commitment Decision Letters and, as a result, the 60-day appeal period passed without filing a timely appeal.¹⁰

5. We conclude that Horizon has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹¹ In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of

imposed by the Schools and Libraries Program on applicants or service providers that are dependent upon the specific dates in effect with the original letter remain unchanged.

⁴ Letter from Sedat Duman, Horizon Science Academy, to Schools and Libraries Division, Universal Service Administrative Company, filed August 21, 2002 (Request for Administrator Review).

Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sadet Duman, Horizon Science Academy, dated August 26, 2002 (Administrator's Decision on Appeal).

⁶ 47 C.F.R. § 54.720(b). See *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 06-45, Order, 17 FCC Rcd 339 (Com. Car. Bur. rel. December 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel. December 28, 2001 and January 4, 2002).

⁷ 47 C.F.R. § 1.7

⁸ See 47 C.F.R. § 54.720(b)

⁹ See 47 C.F.R. § 1.3

¹⁰ Request for Review

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)

submitting its appeal to SLD within the established deadline if the applicant wishes its appeal to be considered on the merits. Horizon asserts that it did not receive the January 11, 2002 Funding Commitment Decision Letter, and had to call SLD to reorder a copy of these letters.

6 The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of adhering strictly to its filing deadlines." In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its appeals to SLD if it wishes its appeals to be considered on the merits. An applicant must take responsibility for the action or inaction of those employees, consultants and other representatives to whom it gives responsibility for submitting timely appeals of SLD funding decisions on its behalf. Here, there is no evidence in the official record supporting Horizon's assertion that it did not receive the Funding Commitment Decision Letters.¹³ Moreover, Horizon fails to present good cause as to why it could not timely file its appeals to SLD. We therefore find no basis for waiving the appeal filing deadline.

4. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review as well as the request for waiver of the appeal filing period, filed on October 25, 2002, by Horizon Science Academy, Cleveland, Ohio **ARE DENIED**.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert

Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

¹² See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. rel. Nov. 24, 2000), para. 8.

¹³ A review of the record indicates that SLD did issue a Funding Commitment Decision Letter on January 11, 2002. Merely stating that a letter was not received at the address provided to SLD and to which prior correspondence had been successfully mailed is insufficient grounds for granting relief. See *Request for Review by Whitehall City School District*, Docket Nos. 96-15 and 97-21, Order, 15 FCC Rcd 15157 (Com. Car. Bur. rel. Aug. 18, 2000); *Juan Galiano*, Memorandum Opinion and Order, 5 FCC Rcd 6442, 6443 (1990) ("[I]f the Commission were to entertain and accept unsupported argument... that letters mailed in Commission proceeding were not delivered... procedural havoc and abuse would result").